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### Eight-17 Assoc. LP v. Cameron

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<b>Eight-17 Assoc. LP v Cameron</b>
2022 NY Slip Op 31825(U)
May 19, 2022
Civil Court of the City of New York, New York County
Docket Number: L&T 300324/2020
Judge: Marc Finkelstein
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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK : HOUSING PART F

-----X  
EIGHT-17 ASSOCIATES LP,

Petitioner,  
-against-

Index No.  
L&T 300324/2020

EMANUEL CAMERON.

DECISION AND ORDER

Respondent.

-----X  
MARC FINKELSTEIN, J.:

Recitation, as required by CPLR 2219(a), of the papers considered in review of Petitioner's Motion to Vacate the ERAP Stay:

	<b>Papers Numbered</b>
Petitioner's Motion .....	<u>1</u>
Affirmation in Opposition .....	<u>2</u>
Affidavit in Opposition .....	<u>3</u>
Affirmation in Reply .....	<u>4</u>

CIVIL COURT OF THE CITY OF NEW YORK  
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EIGHT-17 ASSOCIATES LP,

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EMANUEL CAMERON.

DECISION AND ORDER

Respondent.

-----X  
MARC FINKELSTEIN, J.:

In this summary licensee holdover proceeding the subject premises are subject to rent stabilization. The proceeding was brought after the death and the expiration of the lease of the tenant of record. It was commenced by petition and notice of petition dated July 29, 2020, after the purported service of a 10 Day Notice to Quit dated June 23, 2020. As stated in the petition, “Petitioner requests a final judgment; awarding possession of the premises to Petitioner/Landlord; issuance of a Warrant to remove Respondents from possession, costs and disbursements (\$813.95 /per month Use & Occupancy).”

Respondent, by counsel, has set forth a succession claim, asserting he was adopted by the tenant of record and cohabited with her at the subject premises for more than the requisite time. In support of his succession claim, respondent submits a copy of his Certificate of Adoption noting that an Order of Adoption was signed on November 2, 2016 and a copy of the death certificate of the tenant of record indicating the date of death as February 4, 2020. In his supporting affidavit, Respondent asserts that he moved in with the tenant of record “permanently and continuously” since August 2015.

The proceeding was stayed when respondent filed a Hardship Declaration and an ERAP application. The stay pursuant to a hardship declaration has expired. New York State’s Office of

Temporary an Disability Services (OTDA) has denied respondent’s ERAP application. However, he has appealed the denial. Pursuant to Section 8 of Subpart A of Part BB of Chapter 56 of the Laws of 2021, once the ERAP application is filed, the eviction proceeding “shall be stayed until a final determination.” A final determine includes a final determination on an applicant’s appeal. Administrative Order 34/22 (AO 34/22) of Chief Administrative Judge Lawrence Marks provides that “[e]viction matters where there is a pending ERAP application shall be stayed until a final determination of eligibility for rental assistance is issued by the Office of Temporary and Disability Assistance (OTDA) **including appeals.**” (Emphasis added). Relying on the directive of AO 34/22, the court in Gurevitch v Robinson, Index No. 72539/18, (Civ Ct, Kings County, February 28, 2022), stayed the eviction proceeding pending respondent’s appeal of the ERAP denial. Thus, this proceeding is stayed at this point.

However, petitioner now moves to vacate the ERAP stay, asserting that respondent “is not a qualifying person under the [ERAP] statute.” Petitioner lays out the statutory definitions of “occupant” and “rent” and sets out its argument as to how respondent does not fit those definitions. Petitioner further argues that since it has decided to refuse any ERAP payment, the stay would be futile to the case at hand. Respondent opposes arguing the applicability of the ERAP statute to this case and this respondent.

The court agrees that it has inherent authority to exercise its discretion in determining whether a stay applies and is not limited by OTDA. See, Papandrea-Zavaglia v Hernandez-Aroyave, 2022 NY Misc LEXIS 1291, 2022 NY Slip Op 22109 (Civ Ct, Kings Co 2022). “A distinction must first be made between the statute’s authorization of an agency (OTDA) to dig through the weeds of each application to determine whether Respondents meet the criteria set up for granting or denial of the application for rental assistance funds, and the

Court’s inherent and overarching analysis as to whether the statute, and its protective umbrella, covers the person seeking its protections.” Shi Gan Zheng v Guiseppone, 2022 NY Slip Op 50271(U),(Civ Ct, Richman Co, April 14, 2022). Both sides cite numerous lower court cases upholding and vacating ERAP stays and that the determination is fact specific to the individual circumstances. *See e.g.*, Laporte v Garcia, 2022 NY Slip Op 22126 (Civ Ct, Bronx Co, April 11,2022):

While the determination of eligibility rests with [OTDA], determining whether a stay applies or should be lifted, based upon the particular circumstances of a proceeding, is in the court’s realm. Since an ERAP stay can apply in a holdover proceeding and the court has authority to continue or lift the stay, the question posed is whether the specific facts in this proceeding warrant a vitiation of the ERAP stay (internal citations omitted).

Thus, as applied to the facts and circumstances in the case at hand, the court finds that the stay should be continued. Respondent has presented a colorable claim of succession rights. Furthermore, “it is well settled that a licensee who has a viable succession rights claim is a lawful occupant . . . . [and] a lawful occupant, who is in possession by permission/license of the tenant of record, and then holds over after the tenant’s demise, does not become an unlawful occupant simply because he refuses to surrender possession in pursuit of his succession rights.” Realty Enter. Llc v Williams, 2021 NYLJ LEXIS 360 (Civ Ct, Queens County 2021) (internal citations omitted). Therefore, respondent is a “lawful occupant” as defined by ERAP by virtue of his viable possessory claim as the successor tenant to his adoptive mother’s rent stabilized tenancy.

Moreover, should respondent be successful in that claim, his tenancy would be established and he would be liable for rent ongoing. In the meantime, the petition also seeks use and occupancy, and, while petitioner apparently asserts it will refuse to accept ERAP payment, there is nothing in the record showing that petitioner has waived use and occupancy that it has

demanded and/or that it may demand in the future. In fact, in paragraph 32 of counsel’s reply affirmation he refers to “potential use and occupancy demanded and/or that may in the future found to be owed,” thus apparently reserving the right to seek use and occupancy charges. A similar fact pattern was found in Hudson Ave. Hous. Assoc. LLC v Howard, 2022 NY Slip Op 22078 (Civ Ct, Glens Falls, Warren Co; March 18, 2022), warranting the court to stay the summary holdover proceeding pending a final determination of the respondent’s ERAP application.

The specific facts and circumstances of this proceeding, as set forth above, distinguish it from the variety of cases wherein the ERAP stay has been vacated. Omitting case citations, courts have vacated the ERAP stay where the subject premises are unregulated; where the remaining occupant, the undertenant, does not have succession rights nor any other possessory interest; where respondents were squatters; where respondents were not experiencing housing instability due to their undisputed ownership of another home; where the holdover proceeding was based upon the landlord seeking to recover possession of an apartment for his own use in an unregulated building with four or less apartments; where there was a credible allegation of fraud or a finding of bad faith; and where the matter is a post-foreclosure holdover proceeding.

On the contrary, the specific facts and circumstances of this proceeding warrant this court’s denial of petitioner’s motion to vacate the ERAP stay herein and continuing the stay of this proceeding until a final determination on respondent’s ERAP application is made by OTDA. A similar result was determined in two cases, both licensee holdover proceedings involving rent stabilized premises and succession claims, as is the case here: 204 West 55<sup>th</sup> Street LLC v Mackler, NYLJ No. 1641578807; 2021 WL 6805121 (Civ Ct, NY County, December 2, 2021) (the court declined to vacate the ERAP stay and continued the administrative stay pending a final


determination by OTDA of eligibility of respondent’s ERAP application); Hudson LLC v Hillman, et al, NYLJ 1646709605; 2022 NYLJ LEXIS 189 (Civ Ct, NY County, February 24, 2022) (continuing the ERAP stay and finding “The plain language of sec. 5 contemplates an occupant, as defined in Real Property Law sec. 235-f, as potentially eligible for emergency assistance. Further, the restrictions on evictions do not exclude a proceeding based upon the status of the applicant as a ‘tenant’ or ‘occupant’ and the Court is not persuaded that the legislature intended a selective application of the stay on this basis”).

For these reasons, the court finds that the stay pending ‘s OTDA’s determination of respondent’s ERAP appeal is appropriate and should continue as per Administrative Order 34/22 and Part BB, Subpart A, §8 of Chapter 56 of the Laws of 2021, as modified by L. 2021, c. 417.

Accordingly, petitioner’s motion is denied and this proceeding shall remain on the ERAP administrative calendar to be scheduled after a final decision is made by ODTA on respondent’s ERAP application.

This constitutes the decision and order of the court.

Dated: New York, New York  
May 19, 2022

  
MARC FINKELSTEIN  
JHC  
MARC FINKELSTEIN  
JUDGE, HOUSING COURT